IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

: O R D E R :

Prasar Bharati Broadcasting Corporation of India
Vs.
State of Rajasthan & Others
(S.B. Civil Writ Petition No.205/2006)

DATE OF ORDER : August 8th, 2007

P R E S E N T

Hon'ble Mr. Justice Gopal Krishan Vyas

Mr. Rajesh Joshi for the petitioner.
Mr. N.M. Lodha, Addl. Advocate General for the State.
Mr. Vineet Kumar Mathur for the Union of India.

BY THE COURT :

By this writ petition, the petitioner Prasar Bharati Broadcasting Corporation of India, through Station Engineer, All India Radio, Bikaner has agitated against levy of land and building tax on the properties in its occupation and, so also, against the recovery proceedings initiated against it under the Land Revenue Act vide notice Annex.-19 dated 20.09.2005 issued by respondent No.3 S.D.M., Bikaner.

According to facts of the case set out in the writ petition,

the petitioner is a Corporation established under the Prasar Bharati (Broadcasting Corporation of India) Act, 1990 (referred to hereinafter as "the Act of 1990") having come into force with effect from 15.09.1997. the definition clause under Section 2(a) of the Act of 1990 provides that "Akashwani" means the offices, station and other establishment by whatever name called which immediately before the appointed day, form part of or were under the Director General, All India Radio of the Ministry of Information & Broadcasting, Government of India. Vide para 3, at page 3-A, the petitioner has enumerated the properties in the occupation of the Akashwani in Bikaner and asserted that these properties belong to the Union of India and was allotted by His Excellency, the Governor of Rajasthan in favour of the Union of India.

The petitioner contends that as per Article 285 of the Constitution of India, the properties of the Union of India are exempted from all tax liabilities imposed by either the State or any authority within the State. Referring to the provisions of Article 285 of the Constitution of India, the petitioner contends that against the constitutional provision the respondent No.2 Asstt. Director, Land & Building Department, Bikaner initiated proceedings against the petitioner for assessment of land and building tax on the properties referred to in para 3 of the writ

petition and, in respect of these properties, passed assessment orders vide Annex.-4 on 13.08.2001 and Annex.-5 and Annex.-6 on 14.08.2001, raising a tax liability in the sum of Rs.41,08,508/-. The petitioner submits that though the liability of tax was illegally fastened upon the petitioner, it has deposited approximately a sum of Rs.29,00,000/-.

It is submitted that after the aforesaid having been done, the respondent again issued a revised demand enhancing the liability to the sum of Rs.5,98,36,236/- vide Annex.-8 dated 10.10.2002. The petitioner contends that before issuing the said revised demand neither any notice was given to the petitioner nor any proceedings under Section 15-B of the Rajasthan Land & Building Tax Act, 1964 (hereinafter referred to as "the Act of 1964") was initiated, therefore, the order Annex.-8 dated 10.10.2002 is per se illegal and passed in flagrant violation of the principles of natural justice.

The petitioner's contention in the writ petition is that the demand raised and further revised by the respondents is in violation of the mandatory provisions of the Act of 1964 and though the petitioner has partly deposited the tax immediately, the petitioner is, in fact, not liable to pay land and building tax upon the properties in question because the properties assessed by the assessing authority belong to the Union of India.

Therefore, the petitioner being a Corporation of the Union of India impressed upon the State Government before the Finance Secretary vide communication dated 25.10.2002 that the properties which the petitioner Corporation holds belong to the Union of India and as per the provisions of Article 285 of the Constitution of India the properties of the Union of India are exempted from all tax liabilities. But, unfortunately, without giving any heed to the communication dated 25.10.2002. The petitioner also sent a copy of letter dated 25.10.2002 to respondent No.2 vide Annex.-10. The petitioner further requested respondent No.2 that the properties belong to the Government of India and as such are not liable to land and building tax, therefore, the proceedings for recovery of the demand raised may be dropped.

It is submitted by the petitioner that while the matter is pending decision with the State Government, in the meantime, respondent No.2 has initiated proceedings for recovery of the amount and in this connection notice dated 15.09.2003 (Annex.-15) was served upon the petitioner directing it to deposit a sum of Rs.5,98,36,236/-, failing which proceedings under Section 229/230 of the Land Revenue Act, 1956 will be initiated against the petitioner.

Thereafter, the matter was also taken up by the

Government of India and opinion as to the status of the properties in question was expressed by the Addl. Secretary-cum-Finance Advisor that All India Radio still belongs to the Government of India and as such tax on the said property is not leviable, therefore, the matter may be taken up with the State of Rajasthan. The same was communicated to the Government of Rajasthan as well as respondent No.2. However, the respondents initiated proceedings under Section 229 of the Act of 1956 and served notice upon the petitioner for recovery vide Annex.-18 dated 02.02.2005 and Annex.-19 dated 20.09.2005. Hence, this writ petition.

Besides other grounds, the main contention raised by the petitioner before this Court, while inviting attention towards certain documents, is that Prasar Bharati Corporation is an instrumentality of the Union of India and the properties which the petitioner Corporation is holding belong to the Union of India and the same have not been transferred till date to the petitioner Corporation and as such they continue to be in the name of Union of India which is obvious from the letter Annex.-17 dated 27.12.2004. So also, Annex.-20 dated 05.06.2006, which is placed on record by way of filing application for taking the same on record, speaks in categorical terms that the properties in respect of which the assessment order has been passed for the

liability of land and building tax cannot be imposed because the said properties are properties of the Union of India and exempted under Article 285 of the Constitution of India. The certificate dated 05.06.2006 issued by the Under Secretary to the Government of India reads as under :

"TO WHOMSOEVER IT MAY CONCERN

THIS is regarding imposition of taxes and duties under the State Laws on the property and assets of Prasar Bharati (Broadcasting Corporation of India), established under section 3 of the Prasar Bharati (Broadcasting Corporation of India) Act, 1990 (25 of 1990) with effect from 23rd November, 1997.

2. THE issue regarding imposition of tax by the State Governments was taken up with the Ministry of Finance in the Government of India, who have clarified that the Government of India have not yet formally transferred the land to Prasar Bharati (Broadcasting Corporation of India). So long as the assets are not transferred to Prasar Bharati (i.e., All India Radio and Doordarshan) through issue of a Notification, as enunciated under the provisions of clause (a) of section 16 of the Prasar Bharati (Broadcasting Corporation of India) Act, 1990 (25 of 1990), the land continues to be the asset of the Government of India.

3. HOWEVER, it is further clarified that if some land has been acquired by Prasar Bharati, either through purchase or gift, after 1st April, 2000, i.e., date of delinking of the accounts from the Government accountal system, the applicable taxes would have to be paid by it.

4. This Certificate is being issued to enable Prasar Bharati (Broadcasting Corporation of India) to take up the levy of property tax with the States/U.Ts. On its assets and to grant the necessary waiver under the relevant State

enactments, as are applicable in this regard."

Therefore, according to the petitioner, in view of the judgment of the Supreme Court, reported in 2004 (3) SCC 92 and judgment of this Court in S.B. Civil Writ Petition No.733/2004, I.C.A.R. & Another Vs. State of Rajasthan, it is crystal clear that if the property belongs to the Union of India and it has not been transferred, then, in view of Article 285 of the Constitution of India no tax can be levied. Therefore, it is prayed that the impugned assessment order may be set aside.

On the other hand, respondent No.4 Union of India, in reply to the petitioner's contentions in the writ petition, admits that the properties shown in para 3 of the writ petition belong to the answering respondent and as such it is not disputed by the Union of India, respondent No.4 that the properties in respect of which the assessment orders have been passed admittedly belong to the Union of India.

However, respondents No.1, 2 and 3 filed reply and submitted that Prasar Bharati is not part of Union of India and it is an autonomous body having its own rights and obligations. According to respondents No.1, 2 and 3 the petitioner Corporation is utilizing the properties and so far as present status of the properties is concerned it cannot be treated to the properties of the Union of India. In the reply, though provisions

of Article 285 of the Constitution of India are not disputed the contention is raised that the assessing authority has rightly passed the order and, therefore, there is no error in the demand raised against the petitioner towards liability of tax.

I have considered the rival submissions and perused the entire record.

The petitioner has urged in the facts and circumstances of the case that the properties in respect of which land and building tax is sought to be levied and recovered are exempt from any State tax liability under Article 285 of the Constitution of India. Article 285 of the Constitution reads as under :

> "**285.Exemption of property of the Union from State taxation**-(1) The property of the Union shall, save in so far as Parliament may by law otherwise provide, be exempt from all taxes imposed by a State or by any authority within a State.
> (2) Nothing in clause (1) shall, until Parliament by law otherwise provides, prevent any thority within a State from levying any tax on the property of the Union to which such property was immediately before the commencement of this Constitution liable or treated as liable, so long as that tax continues to be levied in that State."

It is true that initially the All India Radio was under the control of Information & Broadcasting Ministry of the Government of India and it is obvious that under the Act of 1990, enacted by the Parliament, Prasar Bharati (Broadcasting Corporation of India) was created. The said Act came into force

with effect from 15.09.1990. However, according to the documents placed on record, the land and building where the Akashwani is running is still in the name of Union of India and as per reply of the Union of India it is clear that the properties mentioned in para 3 viz., (1) Office Complex & Studio, (2) Transmitter; and (3) Staff Quarters of Akashwani, Bikaner are still the properties of Union of India. This fact is established by the documents placed on record and the reply of the Union of India, respondent No.4. Therefore, in view of the provisions of Article 285 of the Constitution of India, these properties standing in the name of Union of India are exempted from any State tax liability under Article 285 of the Constitution. In these facts and circumstances, the levy of tax by the assessment order under challenge is contrary to law and action of respondents No.1, 2 and 3 is unconstitutional.

It is also necessary to observe that in view of the judgment of the Supreme Court, reported in (2004) 3 SCC, rendered in the case of Municipal Corporation, Amritsar Vs. Senior Superintendent of Post Office, Amritsar Division, and judgment of this Court dated 06.01.2005 passed in S.B. Civil Writ Petitions No.733/2004 and No.7053/2003, the orders passed by the respondents No.1, 2 and 3 cannot be sustained in law and the same deserve to be quashed.

As a result, this writ petition is allowed. Assessment orders Annex.-4 dated 13.08.2001, Annex.-5 and 6 dated 14.08.2001, amended assessment order Anex.-8 dated 10.10.2002 as well as recovery proceedings initiated against the petitioner under the Land Revenue Act vide Annex.-19 dated 20.09.2005 are quashed and set aside. The respondents are directed to refund the amount already deposited by the petitioner Corporation to it within a period of one month from the date of receipt of a copy of this order.

No order as to costs.

(Gopal Krishan Vyas) J.